

BPH RN 21-03: FINAL STATEMENT OF REASONS

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS TITLE 15. CRIME PREVENTION AND CORRECTIONS DIVISION 2. BOARD OF PAROLE HEARINGS CHAPTER 3. PAROLE RELEASE ARTICLE 2. INFORMATION CONSIDERED

Amendment of Section 2240 Comprehensive Risk Assessments

UPDATE OF INITIAL STATEMENT OF REASONS:

At the Board of Parole Hearings' (board) Executive Board Meeting on June 21, 2021, the board voted unanimously to approve the proposed regulatory text in the regulatory package identified as BPH RN 21-03, governing Comprehensive Risk Assessments (CRA). During the 45-day public comment period regarding the regulations, which ended on August 31, 2021, the board received comments from 149 members of the public. One member of the public requested a public hearing, which the board held on Friday, September 17, 2021. At that hearing, the board received written comments from four members of the public and oral comments from five public speakers.

The board considered each public comment received during the 45-day public comment period and public hearing regarding RN 21-03, but declined to make amendments to the proposed regulatory text, as explained in further detail below.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE NOTICE PERIOD OF JULY 16, 2021, TO AUGUST 31, 2021, AND THE PUBLIC HEARING HELD ON SEPTEMBER 17, 2021:

The board received written comments from 149 members of the public during the public comment period of July 16, 2021, through August 31, 2021. The board also received oral comments from five public speakers and written comments from four members of the public during the public hearing on September 17, 2021. Each comment from the commenters was individually identified with a unique identification ("ID") number as follows: [the number assigned to the commenter]-[the number of the comment in order of the comments received from that commenter]. For example, the comment identified as **02-01** would indicate that comment was made by the commenter identified by the board as "02" and was the **first** comment received by the board from that commenter.

The "Written Comments Submitted (during 45-day comment period)" tab includes copies of each correspondence received during the 45-day public comment period. The "Written Comments Submitted (during 9/17/2021 public hearing)" tab includes copies of each written comment received during the public hearing. The "Public Hearing Minutes Dated 9/17/2021" tab includes minutes of the September 17, 2021 public hearing, which documents oral comment received from members of

the public during the public hearing. The board annotated each written comment received during the 45-Day Public Comment Period and September 17, 2021 public hearing, as well as the minutes from the public hearing, to indicate the assigned unique ID number for that particular commenter and the number associated with each individual comment made by that commenter.

The board placed each individual comment into a category based on the issue raised in the comment. Below, the board identifies the specific comment ID numbers for the public comments directed at each category of issue and then addresses each comment within that category.

ISSUE 1: Continue to Require CRAs before All Parole Hearings

Comment ID Numbers: 18-08; 36-04; 61-05; 80-06; 82-02; 82-03; 132-11

These comments stated (1) if the board is going to prepare and consider guidance provided by CRAs when making parole-suitability determinations for some inmates, it should do so for all inmates, (2) the board should prepare CRAs for all inmates eligible for parole consideration and subsequent reconsideration hearings, or (3) it is necessary for the board to prepare CRAs in advance of all parole hearings to understand an inmate's mental status or for parole to be properly granted. The board interpreted these comments as arguing the board should not adopt the proposed regulations and instead should continue operating under the regulatory provisions as they existed before the emergency regulations went into effect on February 5, 2021.

RESPONSE: DECLINED IN FULL AFTER SUBSTANTIVE CONSIDERATION

The board finds these comments relevant and within the scope of the proposed regulations. However, after consideration of these comments, the board declines to adopt amendments to the proposed regulations based on these comments.

These comments suggest the board should maintain the regulatory framework in place prior to enactment of the emergency regulations, which required the board to prepare a CRA in advance of parole consideration and subsequent reconsideration hearings conducted for persons housed within the state of California, as specified. However, as noted in the board's Initial Statement of Reasons (ISOR), this would have resulted in a significant number of scheduled parole consideration and subsequent reconsideration hearings being postponed because the board would not have been able to fulfill its regulatory requirement to prepare a CRA in advance of those hearings. These postponed hearings could have been for inmates who may have otherwise been found suitable for parole at their hearing and subsequently released on parole, causing those inmates to spend additional time incarcerated beyond the point at which they would have been deemed suitable for parole and released.

As stated in the board's ISOR, the board may focus its limited resources on inmates most likely to be found suitable for parole. (*Garner v. Jones* (2000) 529 U.S. 244, 254.) Thus, the board determined the proposed regulations are necessary for the board to address its CRA backlog in a way that protects the due process interest of inmates in receiving timely parole hearings and still allow the board to focus its limited CRA resources on inmates more likely to be found suitable for parole at their hearing.

Further, as noted in the board's ISOR, the board determined the benefit of having a CRA at a parole hearing for an inmate currently on medical parole supervision was outweighed by the costs and logistical hurdles involved with preparing the CRA, particularly in light of the fact that the board generally has additional medical information from medical professionals for inmates on medical parole supervision to facilitate the hearing panel's assessment of the inmates' risk to public safety.

The board is not obligated to prepare CRAs in advance of parole hearings for all inmates, except as required by its own regulations and in limited circumstances under Penal Code section 3053.9. In the absence of a CRA, board hearing panels will still evaluate all relevant and reliable information available in an inmate's central file to determine the inmate's suitability for parole, which is the same information a psychologist would consider in preparing a CRA. Thus, while a CRA may provide guidance to a hearing panel regarding how to understand and assess an inmate's current risk to public safety, it may not be necessary in all situations, such as those identified by these proposed regulations. Moreover, in the event that a CRA is not prepared before an inmate's hearing under these regulations, but a hearing panel determines a CRA is necessary for its parole-suitability decision, the proposed regulations allow the panel to continue the hearing and require the board prepare a CRA, as specified.

ISSUE 2: Hire More Psychologists

Comment ID Number: 24-10

One comment suggested the board should hire more psychologists, specifically psychologists of color, to address its CRA backlog instead of adopting these proposed regulations.

RESPONSE: DECLINED IN FULL AFTER SUBSTANTIVE CONSIDERATION

The board finds this comment relevant and within the scope of the proposed regulations. However, after consideration of this comment, the board declines to adopt amendments to the proposed regulations based on the comment.

As explained in the board's ISOR, one alternative considered by the board was hiring more psychologists to facilitate completion of all CRAs required under current regulations. However, the board would not be able to address the short-term concerns regarding the projected postponements of 864 to 1,411 parole hearings by the end of December 2021 by hiring more psychologists to prepare CRAs. Preparing CRAs for parole consideration hearings is a specialized field of psychology and it requires an extensive working knowledge of the state's correctional system to review and interpret the inmate's prison record. There is a limited supply of forensic psychologists who possess both the necessary skills and experience for this work. Moreover, it takes a minimum of six months to fully train new psychologists to prepare CRAs. Thus, even if the board could have hired new psychologists immediately, as opposed to enacting the emergency regulations that went into effect February 5, 2021, those psychologists would not have been fully trained until around September 2021. Then, drafting CRAs and completing the required review and approval process takes at least another month. Further, the board is required to serve CRAs on inmates at least 60

calendar days prior to their upcoming hearing. (Cal. Code Regs., title 15, § 2240, subd. (d)(2).) Thus, assuming the board could have served CRAs prepared by the newly hired psychologists on inmates starting on October 1, 2021, there would not have been enough time to complete all the CRAs necessary for the required hearings.

Finally, as noted in the ISOR, the pool of psychologists who possess the necessarily skills and experience is already limited. Complicating this situation further is that the board would be unlikely to find enough of these qualified psychologists willing to take a limited-term position. Once the board passes the December 31, 2021 scheduling deadline discussed in the ISOR, projections indicate the board should be able to address any remaining CRA backlog by June 30, 2022. Once the backlog is addressed, it is expected current staffing levels should be sufficient to complete CRAs for hearings scheduled to occur after June 30, 2022. Thus, the board would not need to retain the newly hired psychologists past that date and, consequently, would only be able to offer the new psychologist positions on a limited-term basis. This would undoubtedly have further reduced the number of qualified psychologists who would apply for the position, further hindering the board's ability to hire and train enough qualified psychologists to address the projected CRA backlog.

ISSUE 3: Regulations are Unconstitutional, Unfair, Unjust, or Violate Due Process

Comment ID Numbers: 01-13; 02-10; 03-10; 04-10; 05-06; 05-18; 06-11; 07-10; 08-10; 09-10; 10-11; 11-10; 12-10; 13-10; 14-10; 15-10; 16-09; 17-13; 19-10; 20-10; 21-10; 22-10; 24-16; 25-10; 26-11; 27-10; 28-10; 29-10; 33-10; 35-10; 37-10; 38-10; 39-11; 40-10; 41-10; 42-10; 43-10; 44-10; 45-03; 46-10; 47-10; 49-10; 50-10; 51-11; 53-09; 54-10; 55-10; 57-10; 58-10; 59-13; 60-10; 62-10; 63-05; 63-12; 64-10; 65-10; 66-10; 67-10; 68-08; 69-10; 70-10; 71-10; 72-10; 74-13; 75-11; 76-10; 77-12; 78-10; 79-09; 79-13; 80-07; 80-08; 81-10; 84-10; 86-10; 87-10; 88-10; 89-10; 90-10; 91-10; 92-14; 93-10; 94-10; 95-10; 96-16; 97-10; 98-10; 99-11; 100-10; 101-10; 102-10; 103-11; 104-10; 105-10; 106-10; 107-10; 109-10; 110-10; 111-11; 112-12; 114-10; 116-03; 117-10; 118-13; 120-12; 121-10; 121-12; 121-13; 122-10; 124-10; 125-10; 126-07; 127-10; 128-10; 129-09; 131-11; 132-17; 135-13; 136-10; 137-10; 138-10; 139-10; 141-10; 142-10; 143-10; 144-07; 144-12; 145-10; 146-12; 149-05; 150-10; 151-09; 152-02; 154-05; 154-07; 155-04; 157-05

These comments assert the proposed regulations are unconstitutional, unfair, unjust, or violate due process.

RESPONSE: DECLINED IN FULL AFTER SUBSTANTIVE CONSIDERATION

The board finds these comments relevant and within the scope of the proposed regulations. However, after consideration of these comments, the board declines to adopt amendments to the proposed regulations based on these comments.

An inmate subject to the board's parole jurisdiction does not have a constitutional right to a CRA. As stated in the board's ISOR, inmates subject to the board's jurisdiction have a protected due process liberty interest in parole consideration. Due process mandates inmates be given notice of their parole consideration, an opportunity to be heard, a parole decision supported by some evidence of current dangerousness, and a statement of reasons for the parole denial. (*Greenholtz v. Nebraska Penal Inmates* (1979) 442 U.S. 1; *In re Lawrence* (2008) 44 Cal.4th 1181.) To

promote greater consistency and accuracy in assessing parole suitability, the board conducts CRAs to analyze information already contained in the record and provide expert opinions regarding the impact of that information on the inmate's risk to commit violence in the community. These CRAs are not prepared for the benefit of the inmate, but rather to benefit the hearing panel by providing guidance to the panels on how to assess an individual inmate's suitability for parole. (*In re Lazor* (2009) 172 Cal.App.4th 1185, 1202.) Hearing panels may rely on guidance in CRAs to support findings that the inmate either does or does not continue to pose a current unreasonable risk of danger to the community if released on parole. While the CRAs are informative for hearing panels, inmates do not have a protected statutory or due process right in the board, as the adjudicative body, preparing a CRA prior to a hearing. The proposed regulations only relieve the board, as the adjudicative body, from conducting CRAs for inmates where statistics indicate the CRA would be of least value to the hearing panel, or where additional medical information is available to the board due to the inmate's status on medical parole supervision.

Further, the board's method for determining the hearings for which the board would not prepare a CRA was fair and just because it was based on a statistical analysis of what objective criteria most heavily correlated with certain parole outcomes such that the guidance contained in a CRA would be of least value to a panel in assessing suitability. As stated in the board's ISOR, the board may focus its limited resources on inmates most likely to be found suitable for parole. (*Garner v. Jones, supra*, 529 U.S. at p. 254.) Without the proposed regulations, the board may be forced to postpone parole hearings for which it did not produce a CRA, including hearings for inmates who may have otherwise been found suitable for parole at their hearing and subsequently released on parole. This would cause those inmates to spend additional time incarcerated beyond the point at which they would have been deemed suitable for parole and released. By enacting the proposed emergency regulations based on the results of the discussed statistical analysis, the board ensures inmates receive timely parole hearings and allows the board to focus its limited staffing resources to provide additional guidance to assist hearing panels conducting parole hearings for inmates who are most likely to be found suitable for parole.

Additionally, under Penal Code section 3041, an inmate has a due process right to judicial review of any decision denying the inmate parole to ensure the decision reached by a board hearing panel was based on "some evidence" that the inmate constitutes a current unreasonable risk to public safety. (*In re Rosenkrantz* (2002) 29 Cal.4th 616, 652; *In re Lawrence, supra*, 44 Cal.4th at p. 1205.) Meeting this due process right by ensuring inmates timely received their hearings is a primary basis for the necessity of these regulations. This due process right does not require the board to prepare a CRA in advance of an inmate's parole hearing.

Thus, the board does not agree with assertions that the proposed regulations are unconstitutional, unjust, unfair, or in violation of an inmate's due process.

ISSUE 4: Disproportionate and Negative Impact on Specified Inmate Populations

Comment ID Numbers: 01-08; 02-05; 03-05; 04-05; 05-13; 06-05; 07-05; 08-05; 09-05; 10-06; 11-05; 12-05; 13-05; 14-05; 15-05; 16-05; 17-08; 19-05; 20-05; 21-05; 22-05; 24-05; 25-05; 26-06; 27-05; 28-05; 29-05; 30-03; 33-05; 34-07; 35-05; 36-03; 37-05; 38-05; 39-06; 40-05; 41-05; 42-05; 43-05; 44-05; 46-05; 47-05; 50-05; 51-05; 51-06; 52-02; 53-05; 54-05; 55-05; 56-05; 57-

05; 58-05; 59-05; 60-05; 62-05; 63-06; 64-05; 65-05; 66-05; 67-05; 68-04; 68-05; 68-07; 69-05; 70-05; 71-05; 72-05; 73-10; 74-08; 75-05; 76-05; 77-05; 78-05; 79-07; 80-05; 81-05; 83-05; 84-05; 86-05; 87-05; 88-05; 89-05; 90-05; 91-05; 92-09; 93-05; 94-05; 95-05; 96-05; 97-05; 98-05; 99-06; 100-05; 101-05; 102-05; 103-06; 104-05; 105-05; 106-05; 107-05; 108-05; 109-05; 110-05; 111-06; 112-05; 113-07; 114-05; 115-06; 117-05; 118-08; 120-05; 120-06; 121-05; 122-05; 124-05; 125-05; 126-04; 127-05; 128-05; 130-04; 131-05; 132-05; 135-08; 136-05; 137-05; 138-05; 139-05; 140-06; 141-05; 142-05; 143-05; 144-06; 145-05; 146-07; 147-08; 148-05; 148-10; 150-05; 151-05; 151-107; 153-04; 153-11; 155-05; 156-07; 158-05

Most of these comments asserted or suggested the proposed regulations may have a disproportionate, negative impact on Black and Brown people and those with mental health issues because these individuals are more likely to be housed in high level institutions and receive disciplinary write-ups. Thus, the board is more likely not to prepare a CRA in advance of parole consideration and subsequent reconsideration hearings for these individuals under the regulations. Some of these comments further asserted the proposed regulations are racist or indicative of further institutional systemic racism.

Comment ID Number 30-03 was in opposition to these other comments.

RESPONSE: DECLINED IN FULL AFTER SUBSTANTIVE CONSIDERATION

The board finds these comments are relevant and within the scope of the proposed regulations. However, after consideration of these comments, the board declines to adopt amendments to the proposed regulations based on these comments.

The presence or absence of a CRA has no direct bearing on whether the evidence in an inmate's record demonstrates the inmate is currently suitable or unsuitable for parole. CRAs are not prepared for the benefit of an inmate, but rather to benefit the hearing panel by providing guidance to the panel's assessment of an individual inmate's suitability for parole. (*In re Lazor, supra*, 172 Cal.App.4th at p. 1202.) When available, a CRA is a tool used by board hearing panels to facilitate informed decision making. When not available, the panel assesses the same information related to an inmate's current risk of danger to the community contained in the inmate's record used to create a CRA, combined with information obtained during the hearing, just without the analysis of that information provided by the CRA. Any decision to deny an inmate parole would be subject to judicial review regarding whether "some evidence" supported the hearing panel's determination that the inmate constituted a current unreasonable risk to public safety at the time of their hearing. (*In re Rosenkrantz, supra*, 29 Cal.4th at 652; *In re Lawrence, supra*, 44 Cal.4th at p. 1205.) The fact that a CRA was not prepared in advance of an inmate's parole consideration or subsequent reconsideration hearing is not itself evidence a board hearing panel could rely on to deny an inmate parole that would withstand judicial scrutiny. Thus, the board does not agree with the commenters' claims that not preparing CRAs in advance of parole hearings for specified inmates under the proposed regulations will have a disproportionate and negative impact on the hearing outcomes for the specified inmate populations.

Because the board does not anticipate the proposed regulations will have a disproportionate and negative impact on inmates of specified populations, and because the board did not propose these

regulations out of animosity toward or to target inmates of particular races or ethnicities, the board does not agree that the proposed regulations are racist or indicative of further institutional racism.

ISSUE 5: Proposed Regulations are Equivalent to Slavery

Comment ID Number: 24-07

One comment claimed the proposed regulations are equivalent to slavery.

RESPONSE: DECLINED IN FULL AFTER SUBSTANTIVE CONSIDERATION

The board finds this comment relevant and within the scope of the proposed regulations. However, after consideration of the comment, the board declines to adopt amendments to the proposed regulations based on the comment.

The board disagrees with the assertion that the proposed regulations identifying inmates who will proceed to parole consideration and subsequent reconsideration hearings without a CRA are equivalent to slavery. The commenter provided no evidence or discussion to the contrary.

ISSUE 6: Exclude Inmates from Meaningful Parole Consideration

Comment ID Numbers: 01-06; 01-07; 01-12; 02-03; 02-04; 02-09; 03-03; 03-04; 03-09; 04-03; 04-04; 04-09; 05-03; 05-04; 05-07; 05-08; 05-12; 05-17; 06-03; 06-04; 06-08; 07-03; 07-04; 07-09; 08-03; 08-04; 08-09; 09-03; 09-04; 09-09; 10-04; 10-05; 10-10; 11-03; 11-04; 11-09; 12-03; 12-04; 12-09; 13-03; 13-04; 13-09; 14-03; 14-04; 14-09; 15-03; 15-04; 15-09; 16-03; 16-04; 16-08; 17-03; 17-04; 17-09; 17-12; 18-09; 19-03; 19-04; 19-09; 20-03; 20-04; 20-09; 21-03; 21-04; 21-09; 22-03; 22-04; 22-09; 24-03; 24-04; 24-12; 24-13; 25-03; 25-04; 25-09; 26-03; 26-05; 26-10; 27-03; 27-04; 27-09; 28-03; 28-04; 28-08; 29-03; 29-04; 29-09; 33-03; 33-04; 33-09; 34-03; 34-04; 34-06; 35-03; 35-04; 35-09; 36-02; 37-03; 37-04; 37-09; 38-03; 38-04; 38-09; 39-04; 39-05; 39-10; 40-03; 40-04; 40-09; 41-03; 41-04; 41-09; 42-03; 42-04; 42-09; 43-03; 43-04; 43-09; 44-03; 44-04; 44-09; 45-02; 46-03; 46-04; 46-09; 47-03; 47-04; 47-09; 49-03; 49-04; 49-09; 50-03; 50-04; 50-09; 51-03; 51-04; 51-10; 53-03; 53-04; 53-08; 54-03; 54-04; 54-09; 55-03; 55-04; 55-09; 56-03; 56-04; 56-09; 57-03; 57-04; 57-09; 58-03; 58-04; 58-09; 59-03; 59-04; 59-08; 59-12; 60-03; 60-04; 60-09; 61-03; 61-07; 62-03; 62-04; 62-09; 63-03; 63-04; 63-08; 63-11; 64-03; 64-04; 64-06; 64-08; 65-03; 65-04; 65-09; 66-03; 66-04; 66-09; 67-03; 67-04; 67-09; 68-03; 69-03; 69-04; 69-09; 70-03; 70-04; 70-09; 71-03; 71-04; 71-09; 72-03; 72-04; 72-09; 73-03; 73-04; 73-08; 73-09; 74-03; 74-04; 74-09; 74-12; 75-03; 75-04; 75-09; 76-03; 76-04; 76-09; 77-03; 77-04; 77-09; 77-11; 78-03; 78-04; 78-09; 79-03; 79-04; 79-05; 79-06; 79-12; 80-03; 80-04; 81-03; 81-04; 81-09; 83-04; 83-09; 84-03; 84-04; 84-09; 86-03; 86-04; 86-09; 87-03; 87-04; 87-09; 88-03; 88-04; 88-09; 89-03; 89-04; 89-09; 90-03; 90-04; 90-09; 91-03; 91-04; 91-09; 92-03; 92-04; 92-07; 92-10; 92-13; 93-03; 93-04; 93-09; 94-03; 94-04; 94-09; 95-03; 95-04; 95-09; 96-03; 96-04; 96-09; 96-15; 97-03; 97-04; 97-09; 98-03; 98-04; 98-09; 99-04; 99-05; 99-10; 100-03; 100-04; 100-09; 101-03; 101-04; 101-09; 102-03; 102-04; 102-09; 103-03; 103-05; 103-10; 104-03; 104-04; 104-09; 105-03; 105-04; 105-09; 106-03; 106-04; 106-09; 107-03; 107-04; 107-09; 108-03; 108-04; 108-13; 109-03; 109-04; 109-09; 110-03; 110-04; 110-09; 111-04; 111-05; 111-10;

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These comments included the following statements, all of which effectively argue that the regulations exclude inmates from meaningful parole consideration:

- By excluding certain inmates from receiving a CRA prior to a scheduled parole consideration or subsequent reconsideration hearing, the proposed regulations will exclude the inmates from meaningful consideration of their suitability for parole by the board.
- The regulations have the potential to inhibit access to a fair shot at freedom for individuals who have had no disciplinary write-ups in as many as four years preceding their parole hearing, and who may pose no current risk to society.
- The regulations will practically guarantee certain inmates will be denied parole because the board did not prepare a new CRA in advance of their parole consideration or subsequent reconsideration hearing.
- Inmates impacted by the proposed regulations will be presumed *de facto* unsuitable at their parole consideration or subsequent reconsideration hearing based on the fact that a CRA was not prepared in advance of the inmate's hearing.
- Inmates impacted by the proposed regulations will not receive an individualized, fact-specific assessment of their parole suitability at their parole consideration or subsequent reconsideration hearing because the board will not prepare a CRA in advance of their hearing.
- The regulations disadvantage impacted inmates or create an additional barrier for impacted inmates to be found suitable for parole.
- The regulations exclude impacted inmates from being evaluated for parole suitability within the parole hearing process.
- Under the proposed regulations, the board is making a parole-suitability determination regarding impacted inmates before conducting a parole consideration or subsequent reconsideration hearing for the inmate.
- The proposed regulations will cause the board's rate of denying parole to inmates at parole hearings to increase.
- The regulations prevent many inmates from receiving necessary evaluations to be found suitable for parole at a parole consideration or subsequent reconsideration hearing.
- The regulations make it harder for inmates to be found suitable for parole at a parole consideration or subsequent reconsideration hearing.
- The regulations cause impacted inmates to lose their right to an opportunity to demonstrate their insight into their commitment offense.

- Inmates are not able to demonstrate how they have changed to be granted parole at a parole consideration or subsequent reconsideration hearing without being interviewed as part of preparing a CRA before their hearing.
- The regulations impose a burden on incarcerated people.
- The regulations thwart efforts to reduce the state's prison population, presumably because they will lead to more inmates being denied parole at parole consideration and subsequent parole reconsideration hearings than otherwise would have been denied if the proposed regulations were not adopted.

The comments suggest that the board will deny parole to inmates for whose parole consideration and subsequent reconsideration hearings the board did not prepare a CRA, even if the inmate does not pose a current risk to public safety at the time of their hearing.

RESPONSE: DECLINED IN FULL AFTER SUBSTANTIVE CONSIDERATION

The board finds these comments relevant and within the scope of the proposed regulations. However, after consideration of these comments, the board declines to adopt amendments to the proposed regulations based on these comments.

These arguments are based on a misunderstanding of the purpose and role of the CRA and incorrect facts.

First, as noted above, a CRA is a tool to provide relevant guidance to assist a board hearing panel in determining whether the inmate is suitable for parole. No conclusions or assessments made by a board psychologist preparing an inmate's CRA are automatically determinative of whether an inmate will receive a parole grant. Rather, regardless of whether a CRA exists, a hearing panel must independently determine the inmate's current risk to public safety. If a CRA is prepared, the hearing panel may use the CRA to support its determination if the guidance provided by the CRA is relevant and reliable. CRAs may contain positive and negative analyses of an inmate's risk to commit violence, but the hearing panel must independently determine how to use the CRA's guidance and how much weight, if any, to give the CRA. (*In re Lazor, supra*, 172 Cal.App.4th; *In re Rozzo* (2009) 172 Cal.App.4th 40.)

Second, the absence of a CRA cannot itself constitute evidence that an inmate is unsuitable for parole, meaning a hearing panel cannot base a decision to deny parole on the absence of a CRA. The board is required to conduct an individualized assessment of the inmate's suitability for parole. (*In re Lawrence, supra*, 44 Cal.4th at p. 1217.) If a CRA is not prepared under these regulations, a hearing panel will assess the relevance and reliability of positive and negative factors in the inmate's record, such as programming achievements or institutional misconduct, without the risk assessment tool and determine from the record and information obtained during the hearing whether the inmate constitutes a current risk to public safety. To withstand judicial scrutiny of a decision to deny parole to an inmate, the hearing panel will still be required to articulate in its decision how any particular piece of evidence demonstrates an inmate continues to pose an unreasonable risk to public safety. Lastly, parole grant and denial rates have remained consistent with the emergency regulations in place for more than six months. For all of 2020, 36 percent of parole hearings resulted in a grant and 64 percent resulted in a denial. For the period of

January through September 2021, 35 percent of hearings have resulted in a grant and 65 percent have resulted in a denial.

Whether the board prepares a CRA in advance of an inmate's parole consideration or subsequent reconsideration hearing does not alter the legal standard the board must meet when denying parole to an inmate. Thus, the board disagrees with the commenters' assertions that the regulations will allow the board to deny parole to inmates before whose parole consideration and subsequent reconsideration hearings the board did not prepare a CRA, even if the inmate does not pose a current risk to public safety at the time of their hearing.

However, it is important to note, without the proposed regulations, the board could be forced to postpone parole hearings before which it did not produce a CRA, including hearings for inmates who may have otherwise been found suitable for parole at their hearing and subsequently released on parole. This would cause those inmates to spend additional time incarcerated beyond the point at which they would have been deemed suitable for parole and released.

ISSUE 7: Board's Failure to Normally Grant Parole

Comment ID Numbers: 05-09; 05-10; 05-11; 17-11; 59-07; 64-09; 74-11; 92-12; 96-10; 103-04; 118-11; 135-11; 144-08; 144-09; 144-10; 147-11; 154-02; 154-06; 155-03

These comments assert (1) the board has failed to follow its mandate to normally grant parole, (2) the board has "trapped thousands behind bars for decades longer than necessary," and (3) despite the mandate to normally grant parole, the board's grant rate has remained an average of 16% over the last forty years, meaning most people remain incarcerated years after they become eligible for parole. These comments insinuate that the proposed regulations will compound the board's alleged failure to normally grant parole, as required by statute.

RESPONSE: DECLINED IN FULL AFTER SUBSTANTIVE CONSIDERATION

The board finds these comments relevant and within the scope of the proposed regulations. However, after consideration of these comments, the board declines to adopt amendments to the proposed regulations based on these comments.

Current law mandates hearing panels consider all relevant and reliable information in an inmate's record to assess whether the inmate poses a current unreasonable risk of danger to public safety. (See Cal. Code Regs., tit. 15, §§2281, subd. (b), and 2402 subd. (b); *In re Lawrence*, *supra*, 44 Cal.4th. at 1205) If a CRA is available, it can assist the hearing panel by analyzing the impact of information in the inmate's record on their risk to commit violence in the community, which the panel can use to assess the inmate's current risk of danger to the community. If a CRA is not available, the panel must assess the inmate's current risk of danger to the community from the same information contained in the record used to create a CRA, combined with information obtained during the hearing. While a CRA can be a useful tool for hearing panels, these arguments are misplaced because the presence or absence of this tool has no direct bearing on whether the evidence in the record demonstrates the inmate is currently suitable or unsuitable for parole.

Moreover, these arguments are based on both an incorrect statement of the law and incorrect facts. It is true Penal Code section 3041, subdivision (a)(2), states, “One year before the inmate’s minimum eligible parole date a panel of two or more commissioners or deputy commissioners shall again meet with the inmate and *shall normally* grant parole as provided in Section 3041.5.” (Emphasis added.) However, the commenters’ analyses are incomplete because the very next subdivision in Penal Code section 3041 states, “The panel or the board, sitting en banc, shall grant parole to an inmate *unless* it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual.” (Emphasis added.)

Furthermore, the commenter’s assertions disregard decades of legal precedent, including several California Supreme Court decisions, specifically addressing the legal framework governing the board’s parole decisions. Under subdivision (b)(1), the board is required to deny parole to an inmate if it determines, as specified in statute and based on an individualized assessment of the inmate, that consideration of public safety requires the inmate serve a more lengthy period of incarceration. This determination must be based on whether relevant and reliable information demonstrates an inmate constitutes a current unreasonable risk to public safety. (*See In re Lawrence, supra*, 44 Cal.4th 1181; *In re Shaputis* (2008) 44 Cal.4th 1241.) If an inmate remains a current danger, the board *must* deny the inmate parole. (Pen. Code, § 3041, subd. (b); Cal. Code Regs., tit. 15, § 2281, subd. (a); Cal. Code Regs., tit. 15, § 2402, subd. (a); *In re Palmer* (January 28, 2021, S256249) ___ Cal.5th ___ [2021 WL 279621, *4], citing *In re Lawrence, supra*, 44 Cal.4th at p. 1227; *In re Caswell* (2001) 92 Cal.App.4th 1017, 1026.) Contrary to what the commenters suggest, the board is not required to satisfy a specific statistical grant rate. In fact, requiring hearing panels to adhere to a specific statistical grant rate would violate the law governing the board’s parole decision-making authority and strip inmates of individualized consideration, as required.

One measure of the legal sufficiency of the board’s decisions is the number of the board’s decisions courts find to be deficient. When a court finds one of the board’s decisions to be legally deficient, the board’s decision is vacated and the court orders the board to conduct a new hearing. The number of court-ordered hearings has decreased significantly from 269 out of 7,123 hearings scheduled (3.8 percent) in 2009 to 11 out of 6,061 hearings scheduled (0.2 percent) in 2019, indicating that, contrary to the commenters’ assertions, the board is consistently following the law.

The commenters’ assertions also reflect a fundamental misunderstanding of the board’s grant rates. Often, the board’s parole grant and denial rates are misunderstood. For example, one might assume that if 20% of scheduled hearings resulted in a grant in 2019, it stands to reason that the remaining 80% resulted in a denial of parole; that is not true. A scheduled parole hearing can result in a grant, denial, postponement, waiver, stipulation, continuance, or cancelation. For this reason, it is far more instructive to look at the grant rate for hearings *held*. Of the hearings that were actually held in 2020, 36 percent resulted in a grant. Grants as a percentage of hearings held have doubled from 16 percent in 2009 to 36 percent in 2020.

The grant rate for certain hearings are even higher. For example, if an inmate’s hearing date is advanced based on an internal review by the board (also known as the board’s Administrative

Review Process) or as a result of the inmate filing a petition to advance their next hearing date, it is more likely than not that the hearing held will result in a grant (60 percent of hearings held in 2020 after an Administrative Review and 51 percent of hearings held after a petition to advance the hearing date resulted in a grant). Hearings held for inmates housed at an institution for women also have a higher grant rate. In 2020, 40 percent of hearings held for inmates housed at an institution for women resulted in a grant. Further, 43 percent of hearings held in 2020 for indeterminately sentenced youth offenders resulted in a grant.

It is also important to note that the board's grant rates have steadily increased annually even as the number and percentage of hearings scheduled for inmates who have never had a parole hearing have significantly increased. In 2014, only 16 percent of scheduled hearings were initial hearings and only 5 percent of the board's grants were issued at initial hearings. By 2020, 58 percent of scheduled hearings were initial hearings and 42 percent of the board's grants were issued at initial hearings.

Another measure of the sufficiency of the board's decisions is reflected in the recidivism data for inmates released from incarceration after receiving a grant of parole by the board. The data reflects that recidivism is extremely low, despite the majority of persons eligible for a parole hearing having been sentenced to life terms for the most serious of crimes, such as murder, kidnapping, and rape. Several published recidivism reports demonstrate the low recidivism rates for persons released after a grant of parole by the board.

The *Recidivism Report for Offenders Released from the California Department of Corrections and Rehabilitation in Fiscal Year 2014-15* found, of the 682 life-term inmates released in fiscal year 2014-15 as a result of a grant of parole by the board, 16 offenders, or 2.3 percent, were convicted of a new crime during a three-year follow-up period. Less than one percent (0.4 percent), or three offenders, were convicted of felony crimes against persons.

The California Department of Corrections and Rehabilitation's (department) *2019 Recidivism Report* found, of the 720 indeterminately-sentenced persons released by the board in fiscal year 2015-16, 23 (3.2 percent) were convicted of a misdemeanor or felony during a three-year follow-up period, five of whom (0.7 percent) were convicted of a felony crime against a person.

The department's *2018 Recidivism Report* found, of the 510 life-term inmates released in fiscal year 2013-14 as a result of a grant of parole by the board, 16 offenders, or 3.1 percent, were convicted of a new crime during a three-year follow-up period. Less than one percent (0.6 percent), or three offenders, were convicted of felony crimes against persons.

The department's *2017 Outcome Evaluation Report* found, of the 478 life-term inmates released in fiscal year 2012-13, 20 offenders, or 4.2 percent, were convicted of a new crime during a three-year follow-up period. Less than one percent (0.4 percent), or two offenders, were convicted of felony crimes against persons.

The department's *2016 Outcome Evaluation Report* found, of the 349 life-term inmates released by the board in fiscal year 2011-12, 11 offenders, or 3.2 percent, were convicted of a new crime during a three-year follow-up period. Less than one percent (0.3 percent), or one offender, was convicted of felony crimes against persons.

This recidivism data demonstrates the board is appropriately granting parole to inmates who do not pose an unreasonable risk to public safety, as required.

ISSUE 8: Concerns Regarding Criteria Used to Identify Inmates Who Will Not Receive a CRA

Comment ID Numbers: 01-09; 02-06; 03-06; 04-06; 05-14; 06-09; 06-10; 07-06; 08-06; 09-06; 10-07; 11-06; 12-06; 13-06; 14-06; 15-06; 17-06; 17-07; 19-06; 20-06; 21-06; 22-06; 24-06; 25-06; 26-07; 27-06; 28-09; 29-06; 33-06; 34-05; 35-06; 37-06; 38-06; 39-07; 40-06; 41-06; 42-06; 43-06; 44-06; 46-06; 47-06; 49-05; 50-06; 51-07; 53-06; 54-06; 55-06; 56-06; 57-06; 58-06; 59-06; 60-06; 61-06; 62-06; 63-07; 65-06; 66-06; 67-06; 68-06; 69-06; 70-06; 71-06; 72-06; 73-05; 73-07; 74-06; 74-07; 75-06; 76-06; 77-06; 78-06; 79-08; 81-06; 83-06; 84-06; 86-06; 87-06; 88-06; 89-06; 90-06; 91-06; 92-06; 92-08; 93-06; 94-06; 95-06; 96-06; 96-08; 97-06; 98-06; 99-07; 100-06; 101-06; 102-06; 103-07; 104-06; 105-06; 106-06; 107-06; 108-06; 108-11; 109-06; 110-06; 111-07; 112-07; 113-05; 114-06; 115-07; 116-04; 117-06; 118-06; 118-07; 120-08; 121-06; 122-06; 124-06; 125-06; 126-05; 127-06; 128-06; 130-05; 131-06; 132-06; 133-03; 135-06; 135-07; 136-06; 137-06; 138-06; 139-06; 140-07; 141-06; 142-06; 143-06; 144-13; 145-06; 146-08; 147-06; 147-07; 148-06; 150-06; 151-06; 152-03; 153-05; 153-06; 156-08

Some commenters stated, under the proposed regulations, “[t]he ‘serious’ rule violations that can prevent an individual designated as Security Level IV from receiving a CRA include unauthorized possession of five dollars, refusing to participate in a work assignment, mail violations, and even unauthorized possession of batteries.” Some comments also raised concerns about the board relying on serious Rules Violation Reports (RVR) because they claimed they are not uniformly imposed. The board assumes these commenters were suggesting the board should not rely on the number of serious RVRs received by an inmate between January 1, 2018, and January 1, 2021, as one of the criteria used to identify before which inmates’ parole hearings the board will not prepare a CRA.

Another comment asserted the criteria the board used to identify inmates before whose hearings the board would not prepare a CRA are arbitrary.

RESPONSE: DECLINED IN FULL AFTER SUBSTANTIVE CONSIDERATION

The board finds these comments are relevant and within the scope of the proposed regulations. However, after consideration of these comments, the board declines to adopt amendments to the proposed regulations based on these comments.

First, it is important to note that inmates impacted by the proposed regulations will still receive parole consideration hearings and will have an opportunity to explain the circumstances of any RVRs to the parole hearing panel.

Second, as noted in the board’s ISOR, when analyzing parole hearings conducted in 2019, the board found 99% of non-postponed hearings for inmates designated Security Level IV and who had two or more serious RVRs in the three years preceding their hearing resulted in 1) a denial of

parole, 2) the inmate stipulating to being unsuitable for parole, or 3) the inmate voluntarily waiving their hearing. The department defines administrative and serious RVRs in their regulations. (Cal. Code Regs., tit. 15, §§ 3314, 3315.) Serious RVRs include a range of offenses, with some more serious than others. An inmate's security level is determined by a classification process where an inmate's needs, interests and desires, behavior, and placement score are considered. (Cal. Code Regs., tit. 15, § 3375.) Level IV is the highest security level. (Cal. Code Regs., tit. 15, § 3375.1.) Thus, the board determined that having two or more serious RVRs within about three years prior to implementation of the regulations, while also being designated by the department as Security Level IV, strongly correlates with an inmate being less likely to be found suitable for parole, stipulating to being unsuitable for parole, or voluntarily waiving their hearing based on the inmate's institutional conduct. In these cases, a CRA is of less value to a panel assessing an inmate's current risk to the public.

Further, the board limited these proposed changes to inmates who received at least two serious RVRs over the specified period of time. Thus, the inmates for whose hearings the board will not prepare a CRA do not include inmates who received only one serious RVR over a three-year period, which may have been for conduct the commenters identified. Rather, the proposed regulations apply only to inmates who were found guilty of at least two serious RVRs over a three-year period, which is more indicative of a pattern of antisocial behavior that increases their current risk to public safety.

Thus, the board finds the criteria used in the proposed regulations to identify the inmates before whose parole hearings the board will not prepare a CRA to be appropriate criteria for addressing the board's CRA backlog in a manner that allows the board to focus limited CRA resources on inmates who are more likely to go forward with and be found suitable for parole at their hearings.

ISSUE 9: Difficult for Inmates to Challenge Board Determination Not to Prepare a CRA

Comment ID Number: 144-14

One comment suggested the process included in the proposed regulations for challenging a board determination that an inmate meets the criteria to not receive a CRA prior to a hearing scheduled to occur between April 1, 2021, and June 30, 2022, is insufficient because it requires an inmate to know how to advocate for themselves or be represented by "sufficiently-motivated" counsel who will fight for the inmate's rights.

RESPONSE: DECLINED IN FULL AFTER SUBSTANTIVE CONSIDERATION

The board finds this comment relevant and within the scope of the proposed regulations. However, after consideration of the comment, the board declines to adopt amendments to the proposed regulations based on the comment.

Under the proposed regulations, if the board did not prepare a CRA in advance of an inmate's parole hearing scheduled to occur on or between April 1, 2021, and June 30, 2022, an inmate or their attorney may challenge a determination by the board that the inmate met specified criteria if the inmate or their attorney believes the inmate does not meet the specified criteria. (*See* proposed

regulations, title 15, section 2240, subd. (d)(5).) The specified criteria include determinations by the board that the inmate was designated by the department as Security Level IV as of January 1, 2021, and the inmate received two or more serious RVRs on or between January 1, 2018, and January 1, 2021.

In addition, the proposed regulations create a process through which an inmate or their attorney can request the board prepare a CRA for an inmate's hearing, as specified, even if the inmate meets the specified criteria. (*See* proposed regulations, title 15, section 2240, subd. (d)(6).)

Finally, the board also allows a hearing panel to continue a parole hearing if the panel finds at the hearing that a CRA is necessary for them to reach a determination as to the inmate's suitability for parole. (*See* proposed regulations, title 15, section 2240, subd. (d)(7).)

Inmates are permitted to hire private counsel to represent them during the parole hearing process, and if an inmate does not hire private counsel, the board will provide them with a state-appointed attorney. All attorneys representing inmates within the parole hearing process are required to be active members of the California State Bar, and to adhere to ethical attorney standards in advocating for their clients.

Thus, the board finds these provisions within the proposed regulations provide adequate means for inmates to correct erroneous determinations by the board that the inmate meets the specified criteria, for inmates to request a CRA even if they meet the specified criteria, and for board hearing panels to ensure their parole-suitability decisions are made with necessary information and guidance.

ISSUE 10: CRAs are a Key Factor or Critical in Determining Parole Outcomes

Comment ID Numbers: 01-11; 02-08; 03-08; 04-08; 05-16; 07-08; 08-08; 09-08; 10-09; 11-08; 12-08; 13-08; 14-08; 15-08; 16-07; 19-08; 20-08; 21-08; 22-08; 24-11; 25-08; 26-09; 27-08; 29-08; 33-08; 35-08; 37-08; 38-08; 39-09; 40-08; 41-08; 42-08; 43-08; 44-08; 46-08; 47-08; 49-08; 50-08; 51-09; 54-08; 55-08; 56-08; 57-08; 58-08; 59-11; 60-08; 62-08; 63-10; 64-07; 65-08; 66-08; 67-08; 69-08; 70-08; 71-08; 72-08; 75-08; 76-08; 77-08; 78-08; 79-11; 81-08; 83-08; 84-08; 86-08; 87-08; 88-08; 89-08; 90-08; 91-08; 93-08; 94-08; 95-08; 96-14; 97-08; 98-08; 99-09; 100-08; 101-08; 102-08; 103-09; 104-08; 105-08; 106-08; 107-08; 109-08; 110-08; 111-09; 112-10; 114-08; 115-10; 117-08; 120-10; 121-08; 122-08; 124-08; 125-08; 127-08; 128-08; 130-07; 131-08; 132-15; 136-08; 137-08; 138-08; 139-08; 141-08; 142-08; 143-08; 144-03; 145-08; 146-10; 148-08; 150-08; 151-07; 156-05; 156-10

These comments asserted CRAs are a key factor or critical in determining parole outcomes. The comments assert, because CRAs are a key factor or critical in determining parole outcomes, the board needs to prepare CRAs in advance of all scheduled parole consideration and subsequent reconsideration hearings.

RESPONSE: DECLINED IN FULL AFTER SUBSTANTIVE CONSIDERATION

The board finds these comments relevant and within the scope of the regulations. However, after consideration of these comments, the board declines to adopt amendments to the proposed regulations based on these comments.

It is not clear if the commenters were suggesting CRAs are a key factor in determining whether an inmate is suitable for parole at a parole consideration and subsequent reconsideration hearing, or if the commenters were suggesting that CRAs are a key factor in determining how successful an inmate will be once paroled. Regardless, the board acknowledges CRAs can provide useful guidance and analysis from a licensed psychologist to assist parole consideration and subsequent reconsideration hearing panels with determining an inmate's suitability for parole at the time of their hearing. However, the board must create these carve-outs from the usual rule that new CRAs will be prepared in advance of parole hearings in order to address the board's CRA backlog in a manner that protects the due process interest of inmates in receiving a timely parole hearing and to focus CRA resources on hearings for inmates who are more likely to be found suitable for parole at their hearings and for whom additional information from medical professionals may not be available, such as inmates on medical parole supervision. In the absence of a CRA, hearing panels will still determine an inmate's suitability for parole based on all relevant and reliable information available in the inmate's record, which is the same information considered by board psychologists when preparing a CRA, and if a panel determines a CRA is needed, the panel will continue the hearing and a CRA will be prepared.

ISSUE 11: Cruel to Ignore a CRA When Determining Parole Suitability

Comment ID Numbers: 18-02; 18-06

One comment stated, since parole hearing panels may give weight to guidance provided by CRAs when determining an inmate's suitability for parole, it is cruel to ignore a CRA when assessing parole suitability for inmates impacted by these regulations. Another comment stated it is a conscious miscarriage of justice by the board to "neglect to do everything [it] can in order to obtain the most informed decision."

RESPONSE: DECLINED IN FULL AFTER SUBSTANTIVE CONSIDERATION

The board finds these comments relevant and within the scope of the proposed regulations. However, after consideration of these comments, the board declines to adopt amendments to the proposed regulations based on these comments.

As stated, the CRA is a tool generated by licensed psychologists to provide additional relevant guidance to board hearing panels about an inmate's risk of future violence. The assertion that not preparing a CRA in advance of an inmate's hearing is "cruel" suggests the CRA is generated by the board for the benefit of the inmate at the inmate's hearing; however, the CRA is generated to benefit the hearing panel by providing guidance and opinions of licensed psychologists, not to benefit or harm the inmate for whom the panel is conducting a hearing. When a CRA is not prepared in advance of a hearing, the hearing panel will still rely on all relevant and reliable information available in an inmate's central file when determining the inmate's suitability for parole, which is the same information relied upon by psychologists when preparing a CRA.

Further, as stated, the proposed regulations authorize a hearing panel conducting a parole consideration or subsequent reconsideration hearing for an inmate impacted by the regulations to continue the hearing if the panel finds a CRA is necessary for it to make a determination regarding the inmate's suitability for parole.

Thus, the board disagrees with the comments' assertions that the board's regulations authorizing the board to conduct parole consideration and subsequent reconsideration hearings for specified inmates without preparing a CRA in advance of hearings for those inmates is "cruel" and that the regulations constitute a conscious miscarriage of justice by the board to neglect to do everything it can to make informed decisions regarding the suitability of impacted inmates for parole.

ISSUE 12: Attempt by the Board to Withhold Information

Comment ID Numbers: 18-03; 18-04

One comment claimed, by not preparing a CRA before hearings for impacted inmates, the board is withholding from the board, community, and victims "a serious element." Another comment claimed withholding a CRA is an offense to everyone.

RESPONSE: DECLINED IN FULL AFTER SUBSTANTIVE CONSIDERATION

The board finds these comments relevant and within the scope of the proposed regulations. However, after consideration of these comments, the board declines to adopt amendments to the proposed regulations based on these comments.

The board's decision to not prepare CRAs for impacted inmates under these regulations is not an attempt by the board to "withhold" information from itself, the community, or victims. As noted in the board's ISOR, when analyzing parole hearings conducted in 2019, the board found 99% of non-postponed hearings for inmates designated Security Level IV and who had two or more serious RVRs in the three years preceding their hearing resulted in a denial of parole, the inmate stipulating to being unsuitable for parole, or the inmate voluntarily waiving their hearing. The department defines administrative and serious RVRs in their regulations. (Cal. Code Regs., tit. 15, §§ 3314, 3315.) Thus, the board determined that having two or more serious RVRs within about three years prior to a parole hearing, while also being designated by the department as Security Level IV, strongly correlates with an inmate being deemed unsuitable for parole, stipulating to being unsuitable for parole, or voluntarily waiving their hearing based on their institutional conduct. In these cases, a CRA is of less value to a panel assessing an inmate's current risk to the public. This analysis was conducted to identify an appropriate process through which the board can address its CRA backlog in a way that protects the due process interest of inmates in timely parole hearings and still allow the board to focus its limited CRA resources on inmates who are more likely to be found suitable for parole at their hearing.

Moreover, the proposed regulations authorize hearing panels to continue parole consideration or subsequent reconsideration hearings for specified inmates if the panel finds a CRA is necessary for it to make a determination as to an inmate's suitability for parole.

In the case of inmates on medical parole supervision at the time of their hearing, updated medical information the board receives directly from skilled nursing facilities where the inmates are located while on medical parole supervision is extremely important in assisting and guiding hearing panels in assessing the current risk an inmate poses to public safety. Given the importance and availability of this updated medical information for this inmate population, CRAs are less helpful to hearing panels conducting parole hearings for inmates on medical parole supervision, making the additional logistical hurdles of preparing a CRA for this inmate population unjustified in light of the costs.

Neither decision regarding the type of parole hearing for which the board will not prepare a CRA was an effort by the board to withhold information.

ISSUE 13: Regulations Allow the Board to Reach Parole Decisions without Considering an Inmate's Rehabilitation

Comment ID Number: 96-07

One comment asserted the proposed regulations permit board hearing panels to reach parole-suitability determinations without considering the inmate's overall rehabilitation.

RESPONSE: DECLINED IN FULL AFTER SUBSTANTIVE CONSIDERATION

The board finds this comment relevant and within the scope of the proposed regulations. However, after consideration of the comment, the board declines to adopt amendments to the proposed regulations based on the comment.

The board does not agree that, by not preparing a CRA before a parole hearing for an impacted inmate, the hearing panel conducting the hearing for the inmate will not have to consider the impacted inmate's overall rehabilitation in reaching a determination regarding the inmate's suitability for parole. As discussed above, hearing panels are still required to consider all relevant and reliable information contained in the record, just without the benefit of the guidance and analysis provided by the CRA. The proposed regulations do not alter the legal standards that govern parole-suitability decisions at parole consideration and subsequent reconsideration hearings.

ISSUE 14: Excuse by the Board for Not Doing Its Job

Comment ID Number: 24-09

One comment claimed the proposed regulations constitute an excuse by the board for the board's failure to do its job.

RESPONSE: DECLINED IN FULL AFTER SUBSTANTIVE CONSIDERATION

The board finds this comment relevant and within the scope of the proposed regulations. However, after consideration of the comment, the board declines to adopt amendments to the proposed regulations based on the comment.

It is not clear to the board what the comment is insinuating by saying the board has failed to do its job. The comment may be suggesting the board has failed to do its job by failing to grant parole to a greater number of inmates at parole consideration and subsequent reconsideration hearings, as was argued by other commenters. If so, please see the board's response in the response section titled "Board's Failure to Normally Grant Parole."

Alternatively, the comment may be suggesting the board has failed to do its job by not preparing enough CRAs to minimize the CRA backlog being addressed by the proposed regulations. As stated in the ISOR, the primary factor leading to the board's decision to propose regulations identifying specified inmates before whose hearings it would not prepare a CRA was the impact of COVID-19 on the board's parole hearing calendar. COVID-19 led to a significant increase in the number of parole-hearing postponements. As noted, 50 percent of the postponements involved hearings the board expected to need a new CRA prepared before the board conducted the inmate's next hearing. This occurred at the same time that the board is approaching a December 31, 2021 deadline by which it must provide initial parole hearings, each of which would have required a CRA if not for the emergency regulations currently in effect, to various inmate populations, as noted in the ISOR.

Furthermore, the board determined the benefit of having a CRA at parole hearings for inmates currently on medical parole supervision was outweighed by the costs and logistical hurdles involved with preparing the CRAs, particularly in light of the fact that the board generally has additional medical information from medical professionals for these inmates to facilitate the hearing panel's assessment of the inmate's risk to public safety

Thus, the board does not agree with the assertion that the board is proposing these regulations due to its failure to do its job.

ISSUE 15: CRA Backlog does not Justify Proposed Changes

Comment ID Number: 36-05

This comment asserts the CRA backlog the board is addressing through adoption of the proposed regulations is not a sufficient basis for altering provisions governing when the board will prepare a CRA in advance of an inmate's parole hearing.

RESPONSE: DECLINED IN FULL AFTER SUBSTANTIVE CONSIDERATION

The board finds this comment relevant and within the scope of the proposed regulations. However, after consideration of the comment, the board declines to adopt amendments to the proposed regulations based on the comment.

The board finds the proposed regulations are the most appropriate manner of addressing the CRA backlog, for the reasons discussed in the response section titled “Concerns Regarding Criteria Used to Identify Inmates Who Will Not Receive a CRA.”

ISSUE 16: Regulations do not Benefit Inmates

Comment ID Numbers: 24-15; 123-02; 157-03; 157-04

One comment asserted the board should not adopt the proposed regulations because they do not benefit inmates or their families. Other comments stated CRAs afford inmates an opportunity to grow as an individual, indicating this is why CRAs should always be conducted.

RESPONSE: DECLINED IN FULL AFTER SUBSTANTIVE CONSIDERATION

The board finds these comments relevant and within the scope of the proposed regulations. However, after consideration of these comments, the board declines to adopt amendments to the proposed regulations based on these comments.

As previously explained, the board does not prepare CRAs to benefit inmates, but rather to generate relevant guidance to assist parole hearing panels with evaluating an inmate’s current risk of danger to society.

The board disagrees with the assertion that the proposed regulations do not benefit inmates or their families. The proposed regulations protect the due process interest of inmates in receiving a timely parole consideration hearing by relieving the board of its obligation to prepare a CRA in advance of hearings for specified inmates, thereby allowing the board to address its CRA backlog in a manner that does not adversely impact inmates’ due process interests. Without the proposed regulations, the board may be forced to postpone parole hearings before which it did not produce a CRA, including hearings for inmates who may have otherwise been found suitable for parole at their hearing and subsequently released on parole. This would cause those inmates to spend additional time incarcerated beyond the point at which they would have been deemed suitable for parole and released.

ISSUE 17: Disagree with What Constitutes a “Serious” Rules Violation Report

Comment ID Number: 49-06; 115-08; 129-02

These comments asserted the department’s definition of what constitutes a “serious” RVR is absurd.

RESPONSE: DECLINED IN FULL AS OUTSIDE THE SCOPE OF THE REGULATIONS

The board finds this comment outside the scope of the regulations because the proposed regulations do not address how the department classifies an RVR as “serious,” as opposed to an

“administrative” RVR or “counseling only” RVR. Thus, the board declines to adopt amendments to the proposed regulations based on this comment.

ISSUE 18: Board Should Not Consider Certain Rules Violation Reports When Determining Parole Suitability

Comment ID Numbers: 129-03; 129-06

These comments asserted hearing panels at parole consideration and subsequent reconsideration hearings should not consider certain RVRs an inmate receives while incarcerated when determining the inmate’s suitability for parole.

RESPONSE: DECLINED IN FULL AS NOT RELEVANT TO THE REGULATIONS

The board finds these comments not relevant to the regulatory package because they are not specifically directed at the proposed regulations or to the procedures followed by the board in proposing or adopting the regulations. (*See* Gov. Code § 11346.9, subd. (a)(3).) Therefore, the board declines to adopt amendments to the proposed regulations based on these comments as they did not suggest any proposed amendments.

ISSUE 19: Statements of General Support or Opposition

Comment ID Numbers: 01-02; 01-03; 01-04; 02-01; 03-01; 04-01; 05-01; 06-01; 07-01; 08-01; 09-01; 10-02; 11-01; 12-01; 13-01; 14-01; 15-01; 16-01; 17-01; 18-01; 18-07; 18-10; 19-01; 20-01; 21-01; 22-01; 24-01; 24-14; 25-01; 26-01; 27-01; 28-01; 29-01; 30-01; 30-02; 30-07; 32-01; 33-01; 34-01; 35-01; 36-01; 37-01; 38-01; 39-02; 40-01; 41-01; 42-01; 43-01; 44-01; 45-01; 46-01; 47-01; 48-01; 49-01; 50-01; 51-01; 52-03; 53-01; 54-01; 55-01; 56-01; 57-01; 58-01; 59-01; 60-01; 61-01; 62-01; 63-01; 64-01; 64-11; 65-01; 66-01; 67-01; 68-01; 69-01; 70-01; 71-01; 72-01; 73-01; 74-01; 75-01; 76-01; 77-01; 78-01; 79-01; 80-01; 81-01; 83-02; 84-01; 86-01; 87-01; 88-01; 89-01; 90-01; 91-01; 92-01; 93-01; 94-01; 95-01; 96-01; 97-01; 98-01; 99-02; 99-12; 100-01; 101-01; 102-01; 103-01; 104-01; 105-01; 106-01; 107-01; 108-01; 109-01; 110-01; 111-02; 112-01; 113-01; 114-01; 115-02; 115-12; 116-01; 117-01; 118-01; 119-01; 120-01; 120-07; 121-01; 122-01; 124-01; 125-01; 126-01; 127-01; 128-01; 129-01; 130-01; 131-01; 132-01; 133-02; 135-01; 136-01; 137-01; 138-01; 139-01; 140-01; 141-01; 142-01; 143-01; 144-01; 145-01; 146-01; 147-01; 147-13; 148-01; 148-11; 149-01; 150-01; 151-01; 152-01; 153-01; 155-01; 156-02; 157-02; 158-01

Many of these comments stated they are strongly opposed to the proposed regulations. One comment also stated the proposed regulations were inhuman and asked the board not to enact the proposed regulations. Some comments asserted the proposed regulations were “in opposition to [their] values as Californians.”

Another comment was in support of the proposed regulations. One comment stated the commenter was in opposition to another party’s efforts to oppose the board’s proposed regulations.

RESPONSE: DECLINED IN FULL AS COMMENTS ARE IN GENERAL SUPPORT OR OPPOSITION

The board finds these comments are not relevant and not within the scope of the regulations because each of them raises general support for or opposition to the proposed regulations. Therefore, the board declines to adopt amendments to the proposed regulations based on these comments as they did not suggest any proposed amendments.

ISSUE 20: General Information about Proposed Regulations

Comment ID Numbers: 01-05; 02-02; 03-02; 04-02; 05-02; 06-02; 07-02; 08-02; 09-02; 10-03; 11-02; 12-02; 13-02; 14-02; 15-02; 16-02; 17-02; 19-02; 20-02; 21-02; 22-02; 24-02; 25-02; 26-02; 27-02; 28-02; 29-02; 33-02; 34-02; 35-02; 37-02; 38-02; 39-03; 40-02; 41-02; 42-02; 43-02; 44-02; 46-02; 47-03; 49-02; 50-02; 51-02; 53-02; 54-02; 55-02; 56-02; 57-02; 58-02; 59-02; 60-02; 61-02; 62-02; 63-02; 64-02; 65-02; 66-02; 67-02; 68-02; 69-02; 70-02; 71-02; 72-02; 73-02; 74-02; 75-02; 76-02; 77-02; 78-02; 79-02; 80-02; 81-02; 82-03; 84-02; 86-02; 87-02; 88-02; 89-02; 90-02; 91-02; 92-02; 93-02; 94-02; 95-02; 96-02; 97-02; 98-02; 99-03; 100-02; 101-02; 102-02; 103-02; 104-02; 105-02; 106-02; 107-02; 108-02; 109-02; 110-02; 111-03; 112-02; 113-02; 114-02; 115-03; 117-02; 118-02; 120-02; 121-02; 122-02; 124-02; 125-02; 126-02; 127-02; 128-02; 131-02; 132-02; 135-02; 136-02; 137-02; 138-02; 139-02; 140-02; 141-02; 142-02; 143-02; 144-02; 145-02; 146-02; 147-02; 148-02; 149-02; 150-02; 151-02; 156-03; 158-03

These comments stated the proposed regulations exclude certain incarcerated people from receiving CRAs.

RESPONSE: DECLINED IN FULL AS COMMENTS PROVIDE ONLY GENERAL INFORMATION

The board finds these comments are not relevant and not within the scope of the regulations because each of them only provides general information regarding the provisions in the proposed regulations. Therefore, the board declines to adopt amendments to the proposed regulations based on these comments as they did not suggest any proposed amendments.

ISSUE 21: Request for Public Hearing

Comment ID Number: 31-02

One comment requested the board conduct a public hearing regarding the proposed regulations.

RESPONSE: IMPLEMENTED IN FULL

The board finds this comment relevant and within the scope of the regulations because it pertains to a request for a public hearing under the Administrative Procedures Act. (*See* Gov. Code §

11346.5, subd. (a)(17).) This request was received by the board on August 10, 2021, which was at least 15 days before the close of the public comment period.

The board approved this request and held a public hearing for this regulation package on Friday, September 17, 2021, which was after the close of the 45-day public comment period. Therefore, this comment was implemented.

ISSUE 22: Request for Information Regarding Regulatory Process

Comment ID Numbers: 31-04; 31-05

Some comments requested the board provide information on whether the board anticipated conducting a public hearing on the proposed regulations, how to request a public hearing on the proposed regulations, and how to provide public comment during the public hearing.

RESPONSE: IMPLEMENTED IN FULL

The board finds these comments relevant and within the scope of the regulations because it requests information regarding the procedures followed by the board in proposing or adopting the regulations. (*See* Gov. Code § 11346.9, subd. (a)(3).)

The board provided the requested information on July 21, 2021, and August 9, 2021. Therefore, these comments were implemented.

ISSUE 23: Request for Documents

Comment ID Number: 123-01

This comment requested copies of the ISOR and proposed regulatory text related to this regulatory package.

RESPONSE: IMPLEMENTED IN FULL

The board finds these comments relevant and within the scope of the regulations because it requests documents related to this regulatory package.

The board provided the requested documents to the requester. Therefore, this comment was implemented.

ISSUE 24: Admission CRAs are Not Necessary for Every Hearing

Comment ID Numbers: 01-10; 02-07; 03-07; 04-07; 05-15; 07-07; 08-07; 09-07; 10-08; 11-07; 12-07; 13-07; 14-07; 15-07; 16-06; 19-07; 20-07; 21-07; 22-07; 24-08; 25-07; 26-08; 27-07; 29-07; 33-07; 35-07; 37-07; 38-07; 39-08; 40-07; 41-07; 42-07; 43-07; 44-07; 46-07; 47-07; 49-07;

50-07; 51-08; 53-07; 54-07; 55-07; 56-07; 57-07; 58-07; 59-10; 60-07; 62-07; 63-09; 65-07; 66-07; 67-07; 69-07; 70-07; 71-07; 72-07; 75-07; 76-07; 77-07; 78-07; 79-10; 81-07; 83-07; 84-07; 86-07; 87-07; 88-07; 89-07; 90-07; 91-07; 93-07; 94-07; 95-07; 96-13; 97-07; 98-07; 99-08; 100-07; 101-07; 102-07; 103-08; 104-07; 105-07; 106-07; 107-07; 109-07; 110-07; 111-08; 112-09; 114-07; 115-09; 117-07; 120-09; 121-07; 122-07; 124-07; 125-07; 126-06; 127-07; 128-07; 130-06; 131-07; 132-08; 132-14; 136-07; 137-07; 138-07; 139-07; 141-07; 142-07; 143-07; 145-07; 146-09; 148-07; 150-07; 156-09

Some comments stated the proposed regulations constitute an admission by the board that it is not necessary to conduct CRAs in advance of every scheduled parole consideration and subsequent reconsideration hearing. One comment questioned why the board prepares any CRAs if “it does not count or make a difference.”

RESPONSE: DECLINED IN FULL AFTER SUBSTANTIVE CONSIDERATION

The board finds these comments relevant and within the scope of the regulations. However, after consideration of these comments, the board declines to adopt amendments to the proposed regulations based on these comments.

As stated in the board’s ISOR, the board prepares a CRA prior to a parole consideration or subsequent parole reconsideration hearing to assist the hearing panel in understanding the inmate’s potential risk for future violence. A CRA is prepared by a licensed psychologist and includes, but is not limited to, an evaluation of the inmate’s commitment offense, institutional programming, past and present mental state, and analysis of static and dynamic risk factors based on the inmate’s behaviors and relationships, emotions and attitudes, and perceptions and attributions. It is a tool used by board hearing panels, when available, to facilitate decision making regarding an inmate’s suitability for parole.

However, an inmate subject to the board’s parole-hearing jurisdiction has a protected due process liberty interest in parole consideration. Further, under certain circumstances, such as when an inmate is housed in a skilled nursing facility because of the medical parole process, other medical information may be available to the board when evaluating the inmate’s suitability for parole that lessens the added value of the CRA as a decision-making tool, such that the benefits of a CRA are outweighed by the logistical issues and additional costs associated with preparing the CRA, as stated in the board’s ISOR.

Thus, the board determined it was necessary to create specific exceptions through the proposed regulations to the general rule that a CRA will be prepared in advance of parole consideration and subsequent reconsideration hearings if, on the date of the hearing, more than three years will have passed since the most recent CRA became final. The first exception protects the due process interest of inmates in timely parole consideration by allowing the board to address its CRA backlog in a manner that will not require it to postpone scheduled hearings for inmates due to the board’s inability to prepare a CRA in advance of the hearings. The second exception allows the board to target its CRA-resources on inmates where it does not receive updated medical information directly from skilled nursing facilities, like it does for inmates located at skilled nursing facilities while on medical parole supervision. However, these exceptions do not negate the board’s preference to have a CRA prepared in advance of the vast majority of parole

consideration and subsequent reconsideration hearings so board hearing panels may have relevant guidance from licensed professionals regarding an individual's risk of future violence when making a determination about that person's suitability for parole.

Further, the proposed regulations allow a hearing panel conducting a hearing before which the board did not prepare a CRA to continue that hearing and order that a CRA be prepared if the panel finds a CRA is necessary for it to reach a determination regarding the inmate's suitability for parole, as specified.

ISSUE 25: Not an Emergency

Comment ID Number: 23-02

One comment claimed the circumstances the proposed regulations are addressing do not constitute an emergency.

RESPONSE: DECLINED IN FULL AS NOT RELEVANT TO THE REGULATIONS

The board finds this comment not relevant to the regulatory package because it is not specifically directed at the proposed regulations or to the procedures followed by the board in proposing or adopting the regulations. (*See* Gov. Code § 11346.9, subd. (a)(3).) Therefore, the board declines to adopt amendments to the proposed regulations based on this comment as it did not suggest any proposed amendments.

As noted in the board's ISOR, the proposed regulations apply to specified hearings scheduled to occur between April 1, 2021, and June 30, 2022, and they went into effect as emergency regulations on February 5, 2021. The current regulatory action seeking to adopt these regulations is not an emergency regulatory action. Thus, the board is not required under the procedures followed by the board in adopting these regulations to justify its action by specifying what emergency is being addressed by the regulations.

ISSUE 26: Emergency Regulations Were Intended to Expire in December 2021

Comment ID Number: 153-12

One comment claimed the provisions of the emergency regulations that went into effect February 5, 2021, which these proposed regulations seek to enact through the regular rulemaking process, were intended to expire in December 2021.

RESPONSE: DECLINED IN FULL AFTER SUBSTANTIVE CONSIDERATION

The board finds this comment relevant and within the scope of the proposed regulations. However, after consideration of this comment, the board declines to adopt amendments to the proposed regulations based on the comment.

When enacting the emergency regulations that went into effect February 5, 2021, the board did not intend for those provisions to expire in December 2021. Rather, the board intended to subsequently adopt the provisions in the emergency regulations through the regular rulemaking process, which this regulatory package seeks to do. Further, the emergency regulations, as well as the proposed regulations, specify that the provisions of the regulations are intended to impact parole consideration and subsequent reconsideration hearings scheduled to occur on and between April 1, 2021, and June 30, 2022. Thus, the board did not indicate an intent for the provisions of the emergency regulations to expire on December 2021 without adopting the same provisions through the regular rulemaking process.

ISSUE 27: Emergency Videoconference Regulations

Comment ID Number: 144-11

One comment requested information regarding safeguards the board will implement so inmates attending a scheduled parole proceeding by videoconference will feel comfortable and secure participating in the proceeding.

RESPONSE: DECLINED IN FULL AS NOT RELEVANT TO THE REGULATIONS

The board finds this comment not relevant to the regulatory package because it is not specifically directed at the proposed regulations or to the procedures followed by the board in proposing or adopting the regulations. (*See* Gov. Code § 11346.9, subd. (a)(3).) Therefore, the board declines to adopt amendments to the proposed regulations based on this comment as it did not suggest any proposed amendments.

ISSUE 28: General Personal Information

Comment ID Numbers: 01-01; 06-06; 10-01; 17-05; 18-05; 19-11; 26-04; 28-06; 31-03; 39-01; 61-04; 73-06; 74-05; 75-10; 77-10; 83-01; 92-05; 99-01; 108-08; 108-10; 111-01; 114-11; 115-01; 118-05; 121-11; 129-04; 131-10; 132-07; 133-01; 135-05; 147-05; 153-02; 156-01; 157-01; 158-02

Some comments informed the board of factors specific to a family members' current incarceration, the impact of incarceration on their family, or their past professional experience.

RESPONSE: DECLINED IN FULL AS NOT RELEVANT TO THE REGULATIONS

The board finds these comments not relevant to the regulatory package because they are not specifically directed at the proposed regulations or to the procedures followed by the board in proposing or adopting the regulations. (*See* Gov. Code § 11346.9, subd. (a)(3).) While recognizing that the regulations do impact specified people and their family members, the board was unfortunately unable to complete all required CRAs primarily due to postponements from COVID-19. In an effort to mitigate the impact of the postponements, the board opted to focus its limited CRA resources on inmates most likely to found suitable for parole, so that a person's

release would not be delayed. Therefore, the board declines to adopt amendments to the proposed regulations based on these comments as they did not suggest any proposed amendments.

ISSUE 29: General Statements

Comment ID Numbers: 06-07; 17-10; 23-01; 23-03; 28-07; 30-04; 30-05; 30-06; 31-01; 48-02; 48-03; 52-01; 59-09; 74-10; 82-01; 92-11; 96-11; 96-12; 108-07; 108-09; 108-12; 116-06; 118-10; 129-07; 129-08; 132-08; 132-10; 132-12; 134-01; 135-10; 144-15; 144-16; 147-10; 153-03; 153-08; 154-03; 158-06

These comments include the following:

- Comments informing the board of the commenters' opinions regarding the functions served by California's discretionary parole process.
- Individuals should not be excluded from opportunities to parole from state prison if their background shows they are on the right track.
- Granting parole should be a logical and fair process that involves evaluating whether a person is a threat to society.
- California has too many people incarcerated.
- Only a fraction of life-term inmates paroled by the board have returned to prison with new crimes, suggesting the board is making well-informed decisions.
- The current rate at which the board is granting parole to inmates at parole consideration and subsequent reconsideration hearings is giving inmates hope and spurring life-term inmates to make necessary internal changes before being paroled.
- Currently, the opportunity for all life-term inmates to engage with self-help programming, outside volunteers, and educational opportunities has never been better.
- Thanking the board for responding to email correspondence.
- Parolees are people and deserve fair trials and parole release dates.
- People deserve a second chance, especially if they have had no disciplinary write-ups for years and may not pose a current risk to society.
- To dismantle mass incarceration, society must bring folks home.
- Asking the board to "do what is right."
- Many incarcerated people have means of support, such as jobs, insurance, family, and friends.
- Society should save state funds by investing in youth through funding colleges instead of incarceration.
- Emphasizing the importance of professionalism and respect for human rights.
- Describing pre-hearing procedures.
- Asking the board to consider how long impacted inmates have been incarcerated.
- Expressing support for moving in a positive direction, not backward.
- The state loses money by releasing inmates from prison and keeping anyone incarcerated for 25 years is too long.
- Correctional officers should be held responsible for introducing contraband into prison facilities and making money by selling phones, drugs, and anything else.
- Request for information regarding the meaning of rehabilitation.
- It is not the board's role to resentence or retry inmates.

- Questioning what incentive exists for people to continue to rehabilitate while incarcerated.
- Appeared to quote John Wick.
- The board has added staff as laws have been passed bringing more inmates into the parole hearing process, or bringing them into the process earlier than they otherwise would have been.
- The board has not made changes intended to increase the rate at which parole hearings result in parole grants.
- There are “thousands of women and trans and gender-nonconforming people” incarcerated in department facilities.
- Inmates impacted by the proposed regulations are human.
- The board has opposed changes to the demographic makeup of the board, limitations on the use of unreliable information, and trauma-informed programs that help people make changes commissioners say they want to see.
- The board defends parole hearing decisions in court.
- The board is seeking to adopt the proposed regulations close in time to the Legislature expanding the Elderly Parole Program under Penal Code section 3055 to include many inmates who are at least 50 years of age and have served 20 consecutive years in prison.

RESPONSE: DECLINED IN FULL AS NOT RELEVANT TO THE REGULATIONS

The board finds these comments not relevant to the regulatory package because they are not specifically directed at the proposed regulations or to the procedures followed by the board in proposing or adopting the regulations. (*See* Gov. Code § 11346.9, subd. (a)(3).) Therefore, the board declines to adopt amendments to the proposed regulations based on these comments as they did not suggest any proposed amendments.

UPDATED FISCAL AND ECONOMIC IMPACT:

The board submitted its Form 399 Fiscal and Economic Impact Statement to the Office of Administrative Law on July 6, 2021, along with its notice regarding the proposed regulatory action BPH RN 21-03. At the time, the board did not identify any fiscal impact resulting from the proposed regulations. The board did not amend the proposed regulatory text during this rulemaking process. Therefore, the July 6, 2021 Fiscal and Economic Impact Statement remains current and accurate.

LOCAL MANDATE DETERMINATION:

The board has determined this action does not impose a mandate on local agencies or school districts, nor does it impose a mandate that requires reimbursement pursuant to Part 7 (Section 17561) of Division 4 of the Government Code.

ALTERNATIVES THAT WOULD LESSEN ANY ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES:

No alternatives were proposed to the board that would lessen any adverse economic impact on small businesses.

ALTERNATIVES DETERMINATION:

The board determined that alternatives considered would not be more effective in carrying out the purpose of this action, as effective as and less burdensome to affected private persons than the action proposed, or more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The amendments adopted by the board are the only regulation provisions identified by the board that accomplish the goal of clarifying when the board prepares a CRA for an inmate's parole consideration or subsequent parole reconsideration hearing and how the board will address its CRA backlog in a manner that protects an inmate's due process interest in receiving a timely parole hearing, as described in the board's ISOR. Except as set forth and discussed in the summary and responses to comments, there have not been any other alternatives proposed or otherwise brought to the board's attention.

****END****